

### REMARKS

In the Office Action, the Examiner required that the present application be restricted, under 35 U.S.C. §§ 121 and 372, to one of the following two groups of claims:

**Group I:** Claims 1-26, drawn to methods of inhibiting formation of neutralizing antibodies in a mammal comprising co-administering a virus and a nucleic acid sequence encoding a heterologous protein; and

**Group II:** Claims 27-37, drawn to methods of inhibiting formulation of neutralizing antibodies in a mammal comprising determining the amounts of virus and nucleic acid sequence encoding a heterologous protein to administer using a first and second mammal that will result in the production of neutralizing antibodies against the virus but no neutralizing antibodies against the heterologous protein.

Applicant were also required to elect a single disclosed species from the following groups:

1) of first virus:

- a) adenovirus
- b) adeno-associated virus
- c) retrovirus
- d) pox virus;

2) of second/additional virus:

- a) adenovirus
- b) adeno-associated virus
- c) retrovirus
- d) pox virus;

3) of first heterologous protein encoded by the first nucleic acid:

- a) reporter proteins
- b) neuromediators
- c) interleukins
- d) lymphokines
- e) chemokines
- f) growth factors
- g) neurotransmitters
- h) hormones
- i) blood derivatives
- j) CFTR
- k) dystrophin
- l) insulin; and

4) of second/additional heterologous protein encoded by the second/additional nucleic acid:

- a) reporter proteins
- b) neuromediators
- c) interleukins
- d) lymphokines
- e) chemokines
- f) growth factors
- g) neurotransmitters
- h) hormones
- i) thrombopietin
- j) CFTR
- k) dystrophin
- l) insulin.

Applicants hereby elect *with traverse* the invention defined by the Examiner as Group 1, claims 1-26, drawn to methods of inhibiting formation of neutralizing antibodies in a mammal comprising co-administering a virus and a nucleic acid sequence encoding a heterologous protein.

Applicants also elect adenovirus as a first virus, and adeno-associated virus as a second virus. Applicants respectfully request that the Examiner consider cytokines as a first heterologous protein encoded by the first nucleic acid, as supported at page 24, paragraph 76 of the specification. If this election is not acceptable Applicants elect interleukins as a first heterologous protein encoded by the first nucleic acid. Applicants elect lymphokines as a second/additional heterologous protein encoded by the second/additional nucleic acid.

Applicants traverse for at least the following reasons. Applicants respectfully assert that the inventions of Groups I and II should be examined together.

Applicants respectfully submit that the inventions of Groups I-II are closely related and that a proper search of any of the claims should, by necessity, require a proper search of the others. Thus, Applicants submit that all of the claims can be searched simultaneously, and that a duplicative search, with possibly inconsistent results, may occur if the restriction requirement is maintained.

Regardless of whether the two inventions are independent or distinct, Applicants respectfully assert that the Examiner need not have restricted the application. MPEP § 803 requires that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Therefore, it is not mandatory to make a restriction requirement in all situations where it would be deemed proper.

In the interest of economy, for the Office, for the public-at-large, and for Applicants, reconsideration and withdrawal of the restriction requirement is requested.

This response has been made without prejudice or disclaimer to any of the non-elected subject matter. Applicants expressly reserve the right to file one or more continuation and/or divisional applications directed to any of the non-elected subject matter.

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

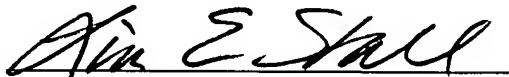
In the event that there are any questions related to this response, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney at the below-listed telephone number concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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By:



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